



# HAWAI'I TOBACCO Laws

2007

HAWAI'I DEPARTMENT OF HEALTH



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# INTRODUCTION

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Smoking and tobacco use as well as exposure to tobacco smoke are the leading causes of preventable illness and death in Hawaii. Secondhand smoke causes heart disease, stroke, respiratory disease, and lung cancer in healthy nonsmokers. Thousands of premature deaths and illnesses in Hawaii are attributed to it annually.

On June 27, 2006, the U.S. Surgeon General released its landmark report, ***The Health Consequences of Involuntary Exposure to Tobacco Smoke***. One of the report's major conclusions was that there is no safe level of exposure to secondhand smoke, and that even elaborate ventilation systems and smoking rooms do not protect people from its health hazards. (For the full report, see <http://www.surgeongeneral.gov/library/secondhandsmoke/>)

All counties in Hawaii have adopted ordinances that offer varying levels of protection to workers and the public against secondhand smoke.

The legislature passed SB3262 CD1 in May 2006 and Governor Linda Lingle signed Act 295 on July 10, 2006 making Hawaii the 14th state to enact a strong smoke-free workplace law. Act 295 became effective November 16, 2006, coinciding with the Great American Smokeout.

Act 295 repealed Chapter 328K of the Hawaii Revised Statutes and established a new chapter that protects the public health and welfare by not allowing smoking in places open to the public and places of employment. The law defends the rights of workers, customers, and the general public to breathe smoke-free air. The counties in Hawaii may continue to adopt and enforce local laws regulating smoking; however, these regulations must be at least as strict as Act 295.

This booklet provides an overview of tobacco laws that affect Hawaii, including information on Hawaii state laws and regulations related to tobacco. It also describes the distribution of funds under the Tobacco Master Settlement Agreement. The laws in this booklet are divided into 6 topic areas:

- **Secondhand Smoke**
- **Tobacco Sales**
- **Tobacco Samples, Coupons, and Tobacco Promotional Materials**
- **Tobacco Tax Law**
- **Licensing and Reporting**
- **Tobacco Master Settlement Agreement (MSA) funds**

# SECONDHAND SMOKE

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## 1. WORKPLACES

### **SCOPE:**

It is against the law to smoke in an enclosed or partially enclosed place of employment.

No employer shall knowingly or intentionally permit smoking in an enclosed or partially enclosed area at a place of employment.

**Note:** "PLACE OF EMPLOYMENT" means:

- an area under the control of a public or private employer that employees normally frequent during the course of employment including, but not limited to auditoriums, cafeterias, classrooms, clubs, common work areas, conference rooms, elevators, employee lounges, hallways, medical facilities, meeting rooms, private offices, restrooms, and stairs.

**Note:** "ENCLOSED OR PARTIALLY ENCLOSED" means:

- closed in by a roof or overhang and at least two walls.

Enclosed or partially enclosed areas include but are not limited to areas commonly described as public lobbies, lanais, interior courtyards, patios, and covered walkways.

### **EXCEPTIONS:**

#### **Smoking is allowed in the following locations:**

- (1) Private residences, except when used as a licensed child care, adult day care, or health care facility.
- (2) Hotels and motels may designate up to 20 percent of rooms as smoking allowed. Rooms must be on the same floor, contiguous and the smoke from these rooms must not circulate to the areas where smoking is not allowed. The status of rooms as smoking or non-smoking may not be changed, except to add additional nonsmoking rooms.
- (3) Retail tobacco stores; provided that smoke from these places must not circulate into areas where smoking is not allowed.
- (4) Private and semiprivate rooms in nursing homes and long-term care facilities that are occupied by one or more persons. Residents who are smokers must request in writing to be placed in a room where smoking is allowed. The smoke from these rooms must not circulate to the areas where smoking is not allowed.
- (5) All areas covered by Act 295 when smoking is part of a production being filmed and
- (6) State correctional facilities.

## 2. APARTMENT COMPLEXES AND MULTI-UNIT RESIDENCES

### **SCOPE:**

The common areas of apartment or condominium buildings or complexes (such as lobbies and hallways and other areas used by all residents) are subject to the smoking prohibitions in enclosed or partially enclosed areas open to the public.

**Note:** Owners of apartment buildings and condominium associations may adopt a policy which designates all or part of a building as smoke-free, including individual apartments and condominiums. Owners may include a lease provision prohibiting smoking in a rental unit. Owners also may adopt a policy to regulate or prohibit smoking in outdoor locations on the property.

**Note:** Tenants with certain physical impairments may have other legal remedies available to prevent drifting smoke from entering their residences. Individuals with disabilities as defined under state or federal law (which could include asthma under certain circumstances) are entitled to reasonable accommodations and/or modifications of policies from their landlords to ensure equal access to and enjoyment of their housing.

## 3. STATE AND COUNTY BUILDINGS

### **SCOPE:**

Smoking is prohibited:

- in all enclosed or partially enclosed facilities, including buildings and vehicles, owned, leased, or operated by the State or any county.
- in an outdoor area within 20 feet of entrances, exits, windows that open, and ventilation intakes.

## 4. PUBLIC SCHOOLS

### ***Chapter 302A-102, Hawaii Revised Statutes***

### **SCOPE:**

- (A) All public schools within the State, from kindergarten through grade twelve, prohibit the use of tobacco at public schools or at public school functions.
- (B) The Department of Education is to provide affected public employees with breaks throughout the work day during which they may smoke at locations off campus. The number and duration of such breaks are subject to collective bargaining.
- (C) The Department of Education is to provide a smoking cessation program for public employees who are interested in participating; provided that issues relating to the costs of the program are subject to collective bargaining.

# SECONDHAND SMOKE

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## 5. LICENSED CHILD CARE, ADULT DAY CARE AND HEALTH CARE FACILITIES

### **SCOPE:**

Smoking is prohibited on the premises of a licensed child care, adult day care, or health care facility.

### **EXCEPTION:**

**This law does not apply to private residence not used for the above.**

## 6. RESTAURANTS, BARS AND NIGHTCLUBS

### **SCOPE:**

Smoking is prohibited in all areas (indoor and outdoor) of restaurants and bars and in nightclubs.

**Note:** "RESTAURANT" means:

- an eating establishment (including but not limited to coffee shops, cafeterias, sandwich stands, and private and public school cafeterias) which gives or offers for sale food to the public, guests, or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere.

The term "restaurant" includes a bar area within the restaurant and outdoor areas of restaurants.

**Note:** "BAR" means:

- an establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises regardless of whether food is served, including but not limited to taverns, cocktail lounges, and cabarets, including outdoor areas of bars.

**Note:** "NIGHTCLUB" means:

- an establishment in which live entertainment is provided or facilities for dancing by patrons either by live entertainment or recorded music may be provided, regardless of whether alcoholic beverages are served.

## 7. PUBLIC TRANSPORTATION

### **SCOPE:**

Smoking is prohibited in the following places:

- Airports, from curb to cabin
- Public transportation facilities and vehicles, including buses and taxicabs



### 8. OTHER PLACES OPEN TO THE PUBLIC

#### **SCOPE:**

Smoking is prohibited in all enclosed or partially enclosed areas open to the public, including but not limited to the following places:

- Aquariums, galleries, libraries, and museums;
- Restrooms;
- Lobbies, reception areas, hallways, and other common areas of professional offices, banks, laundromats, hotels, and motels;
- Bars;
- Bowling alleys;
- Convention facilities;
- Educational facilities, both public and private;
- Elevators;
- Theaters, stage, drama, lecture, musical recital, or other similar performance, except when part of the performance;
- Hotel and motel lobbies, meeting rooms, and banquet facilities;
- Lobbies, hallways, and other common areas in apartment buildings, condominiums, retirement facilities, nursing homes, multifamily dwellings, and other multiple-unit residential facilities;
- Polling places;
- Retail stores;
- State or county rooms, chambers, places of meeting or public assembly;
- Service lines;
- Shopping malls.

#### **PENALTY:**

- (a) A person who smokes in an area where smoking is prohibited by this law may be fined \$50 plus court costs.**
- (b) A person who owns, manages, operates, or controls any place or facility and fails to comply with the law may be fined up to \$100 for a first violation; \$200 for a second violation within one year of the date of the first violation; and \$500 for each additional violation within one year of the preceding violation.**

# TOBACCO SALES

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## 9. SELLING/GIVING TOBACCO PRODUCTS TO MINORS

*Hawai'i State Law HRS §709-908 (Supp. 2002)*

**SCOPE:**

It is unlawful to sell or furnish tobacco in any shape or form, including chewing tobacco and snuff, to a minor under eighteen years of age.

**FINE FOR SELLER:**

**First Offense: \$500**

**Subsequent Offenses: \$500-\$2,000**

**PROHIBITS TOBACCO PURCHASES BY MINORS:**

It shall be unlawful for a minor under eighteen years of age to purchase any tobacco product.

**FINE:**

**First Offense: \$10**

**Subsequent Offenses: \$50 or 48 to 72 hours of community service**

**REQUIRED SIGNAGE:**

Signs using the statement, "THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER EIGHTEEN IS PROHIBITED," shall be posted on or near any vending machines in letters at least one-half inch high and at or near the point of sale of any other location where tobacco products are sold in letters at least one-half inch high.

**FINE:**

**First Offense: \$500**

**Subsequent Offenses: \$500-\$2,000**

**ENFORCEMENT:**

**Police in each jurisdiction**

## 10. UNOFFICIAL AGE IDENTIFICATION CARD

*City and County of Honolulu*

*Chapter 40 Article 17 of Revised Ordinances of Honolulu*

*(Added by Ordinance 99-66)*

**SCOPE:**

Prohibits the manufacture, sale or supply of unofficial age identification card to prevent underage youth from using fake IDs to purchase alcohol and tobacco products.

These fake IDs must state "SOUVENIR ONLY" and "THIS BIRTHDATE HAS NOT BEEN VERIFIED."

## 11. BIDI CIGARETTE AND HERBAL CIGARETTE PROHIBITION

*City and County of Honolulu, Chapter 40 of Revised Ordinance of Honolulu 1990, as amended*

**SCOPE:**

Ordinance 00-23: Prohibits selling, giving or bartering away, or furnishing to any other person bidi cigarettes.

Ordinance 00-60: Prohibits selling, giving or bartering away, or furnishing to an individual under eighteen years of age herbal cigarettes.

**FINE:**

**First Offense: Up to \$500**

**Subsequent Offenses: \$500-\$1,000**

**ENFORCEMENT:**

**Honolulu Police Department**

# TOBACCO SALES

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## 12. PROHIBITED CIGARETTE SALES OF LESS THAN TWENTY

*Hawai'i State Law HRS 712-1257*

*(Act 201, Section 2, SLH 2000, AMENDING §712-1257 (4), H.R.S.)*

**SCOPE:**

Prohibits the sale of single cigarettes, sometimes referred to as “loosies” or packs of cigarettes containing less than 20 cigarettes.

Also prohibits the sale of cigarettes in anything other than in sealed packs originating with the manufacturer and bearing the health warning required by law.

**FINE:**

**Not more than \$2,500 for the first offense. Any subsequent offense shall subject the person to a fine of not less than \$100 and not more than \$5,000. A person who knowingly violates Act 201, shall be guilty of a class C felony.**

**ENFORCEMENT:**

**Police in each police jurisdiction**

## 13. VENDING MACHINES

**SCOPE:**

The sale or distribution at no charge of cigarettes is prohibited from cigarette vending machines unless the vending machine is located in a bar, cabaret, or any establishment for which the minimum age for admission is eighteen.

**Note:** “SELL” or “SALE” means:

- to solicit and receive an order for; to have, keep, offer, or expose for sale; to deliver for value or in any other manner than purely gratuitously; to peddle; to keep with intent to sell; or to traffic in.

**Note:** “CIGARETTE VENDING MACHINE” means:

- a self-service device that dispenses cigarettes, cigars, tobacco, or any other product containing tobacco.

**FINE:**

**Up to \$1,000 per day for each violation**

### 14. LUNCH WAGONS

**SCOPE:**

The sale or distribution at no charge of cigarettes from a lunch wagon engaging in any sales activity within one thousand feet of any public or private elementary or secondary school grounds.

**Note:** "LUNCH WAGON" means:

- a mobile vehicle designed and constructed to transport food and from which food is sold to the general public and includes but is not limited to manapua trucks.

**FINE:**

**Up to \$1,000 per day for each violation**

### 15. EXPORT AND FOREIGN CIGARETTES

*Hawai'i State Law Chapter HRS § 245-51 et. seq.*

**SCOPE:**

Prohibits the sale and distribution of cigarettes designated for export and sale outside the United States and the altering of cigarette packages.

**PENALTY:**

**Fines and imprisonment**

**ENFORCEMENT:**

**The Department of the Attorney General, the prosecuting attorneys of various counties, and the police department of various counties**

# TOBACCO SAMPLES, COUPONS, AND TOBACCO PROMOTIONAL MATERIALS

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## 16. DISTRIBUTION OF SAMPLE CIGARETTE OR TOBACCO PRODUCTS, CIGARETTE OR TOBACCO PROMOTIONAL MATERIALS, AND COUPONS REDEEMABLE FOR CIGARETTE OR TOBACCO PRODUCTS OR PROMOTIONAL MATERIALS

### **SCOPE:**

Samples of cigarette or tobacco products, or coupons redeemable for cigarette or tobacco products may not be distributed in or on any public street, sidewalk, or park, or within one thousand feet of any elementary, middle, or high school.

Cigarette or tobacco promotional materials, or coupons redeemable for cigarette or tobacco promotional materials, may not be distributed within one thousand feet of any elementary, middle, or high school.

**Note:** "DISTRIBUTE" means:

- to pass out to members of the general public free of charge for the exclusive purpose of promoting a product."

### **EXCEPTION:**

**This section does not apply within private commercial establishments, such as stores and restaurants, where tobacco products are sold, as long as distribution is not visible to the public from outside the establishment.**

**This section does not apply to commercial establishments where access to the premises by persons under eighteen years of age is prohibited by law.**

### **FINE:**

**Violators are subject to a fine of up to \$1,000.**

# TOBACCO TAX LAW

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## 17. CIGARETTE TAX INCREASE

*Act 316, S.B. 2961 C.D. 1, 2006*

### **SCOPE:**

Increases the tax on cigarettes and uses the monies derived from the tax increase to fund programs that promote health. This measure creates the Hawaii Cancer Research Special Fund and the Community Health Center Special Fund and exempts these funds, as well as the Emergency Medical Services Special Fund, from transfers for central service and administrative expenses.

## 18. INTERNET SALES

*Act 157, Part I amends Chapter 245, and  
Part II amends Section 8, Chapter 328L, Hawai'i State Law HRS, 2004*

### **SCOPE:**

Prohibits the distribution of untaxed cigarettes via telephone, mail order, the Internet, or other on-line sources to address the availability of low priced cigarettes to underage smokers; revises provisions relating to the Attorney General's seizure and confiscation authority; limits supersedeas bond amount for tobacco master settlement signatories to ensure their ability to continue to make settlement payments.

## 19. TAX STAMPS

*Hawai'i State Law HRS Chapter 245*

### **SCOPE:**

As of April 1, 2001, all cigarette packages for sale must have a tax stamp affixed to the bottom of each cigarette package. Session Laws of Hawai'i 2003, pursuant to Act 77, refines the enforcement responsibilities of the Department of the Attorney General regarding enforcement of the tobacco Master Settlement Agreement, cigarette tax stamping requirements, the "gray market" enforcement requirements, and tobacco reporting requirements.

### **PENALTY:**

**Fines and/or imprisonment**

### **ENFORCEMENT:**

**Department of Attorney General**

**The attorney general may seek assistance in enforcement from other law enforcement agencies.**

# LICENSING AND REPORTING

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## 20. RETAIL TOBACCO PERMIT

*Hawai'i Revised Statutes, 2005*

*(Act 131, amends Section 1, Chapter 245 and Section 2, Section 245-1)*

**SCOPE:**

Requires businesses engaged in the sale of cigarettes and other tobacco products to obtain an annual \$20 retail tobacco permit from the Department of Taxation by December 1, 2006. Retailers have until March 1, 2007 before facing criminal penalties for failing to get a valid retail tobacco permit.

**PENALTY:**

**Fines and imprisonment**



# **MASTER SETTLEMENT AGREEMENT (MSA) FUNDS**

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## **21. DISTRIBUTION OF FUNDS UNDER TOBACCO MASTER SETTLEMENT AGREEMENT**

***Session Laws of Hawai'i 2003, pursuant to Act 177***

**SCOPE:**

Synchronizes timing of settlement moneys from the Tobacco Master Settlement and the Tobacco Master Settlement Agreement to match the timing of revenues and expenses utilized.

Expands the authorized uses of the funds contained in the Tobacco Enforcement Special Fund to include the enforcement of tax stamp requirements.

Transfers the moneys held in the Cigarette Tax Stamp Enforcement Special Fund into the Tobacco Enforcement Special Fund.

***Hawai'i State Law HRS §328L-1 et. seq. (Supp.2002)***

Allocates the settlement moneys received from the Tobacco Master Settlement Agreement into various funds.

**COMPLAINTS ABOUT VIOLATIONS SHOULD BE REFERRED TO:**

**Hawai'i State Department of Health**

Tobacco Prevention and Education Program . . . . . (808) 586-4613  
(888) 810-8112 *Toll Free*

**City and County of Honolulu**

Complaints Office . . . . . (808) 523-4381

**County of Hawai'i**

District Health Office - Hilo: . . . . . (808) 933-0911  
District Health Office - Kona: . . . . . (808) 322-4880  
Complaints Office . . . . . (808) 961-8223

**County of Kaua'i**

District Health Office . . . . . (808) 241-3614  
Complaints Office . . . . . (808) 241-6304

**County of Maui**

District Health Office . . . . . (808) 984-8200  
Complaints Office . . . . . (808) 270-7859

**Moloka'i:**

. . . . . (800) 272-0117 *Toll Free*





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